

# CENTER ON RACE, POVERTY & THE ENVIRONMENT

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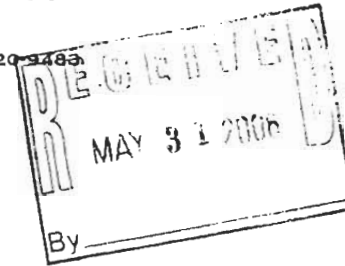
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May 24, 2006

The Hon. A.G. Kawamura, Secretary  
California Department of Food and Agriculture  
1220 N Street  
Sacramento, CA 95814

**Re:** *Environmental Effects of Amendments to the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas.*

Dear Mr. Kawamura:

The Center on Race Poverty and the Environment submits these comments to the California Department of Food and Agriculture ("Department") to urge the agency to consider the potential environmental impacts of the Amendments to the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas ("Milk Plans"). The changes to the Milk Plans create incentives for building and operating more milk processing plants and, possibly, more dairies, with attendant environmental impacts, especially in the Central Valley. The Milk Plans even fit the description of a "project" with environmental impacts under the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*). Currently, there are no measures in place to address the disposal of wastes from these facilities, and the Department should not approve the Milk Plans until it ensures that there are measures in place to address the potential environmental impacts.

**The changes to the Milk Plans create incentives for construction with environmental impacts.**

The Department's approval of the Milk Plans is likely to result in environment impacts. The Milk Plans amendments, if approved, would reduce business expenses for milk processing plants in California, thus creating incentives for investment in the construction and operation of new milk processing plants. The Milk Plans are also likely to encourage the growth and development of dairies by creating greater milk processing capacity and thus a bigger market for milk. Both the construction and the operation of these plants and dairies are likely to create environmental impacts. Most of these impacts are likely to be felt in the Central Valley, where our client communities

reside. Dairy processing plants tend to locate near dairies and the majority of dairies in California are located in the Central Valley and continue to build in the Valley.

Even the Dairy Institute of California, which proposed the amendments being considered in the Milk Plans, points out that the Milk Plans amendments are likely to result in new construction. The Dairy Institute writes in its petition that "currently, milk processing capacity in the state is near its maximum," but that the state needs new plant capacity capable of handling 3.3 million pounds of milk per day. Letter from William Schiek, Economist, The Dairy Institute, to the Hon. A.G. Kawamura, Secretary, Cal. Dep't of Food and Agriculture 1 (Feb. 6, 2006). The Dairy Institute states that it knows of only one new plant being built and of none that are planned. Therefore, because "[t]he prospects for attracting new plant investment have been dimmed by the deteriorating business climate in California," the Dairy Institute proposes the changes to the Milk Plans at issue here. As the Dairy Institute suggests, the amendments will reduce business costs, which is likely to create incentives to invest in the construction of new milk processing plants.

The Dairy Institute letter also states that the "current rate of milk production *growth* necessitates that the state add new plant capacity each year." (Emphasis added). A lack of new processing plant capacity might inhibit the growth of milk production. Conversely, adding new milk processing capacity encourages the continued growth of current milk production. Growth of milk production will also generate environmental impacts through the expansion and new construction of dairies.

Dairies and milk processing facilities are both associated with significant environmental impacts. Dairies are the largest source of smog-forming volatile organic compounds in the San Joaquin Valley, out-polluting cars, oil and gas production, and pesticides.<sup>1</sup> The Valley violates the federal health based 8-hour ozone National Ambient Air Quality Standard on more days than any other air basin in the United States, and several Valley counties make the list of the ten most ozone-polluted counties in the nation in the American Lung Association's STATE OF THE AIR: 2006 report. Further construction of dairies would only add to the problem. Dairies have also been linked to serious pollution of groundwater. Groundwater under even well-run dairies with herds of 1,000 cows shows nitrogen contamination that is almost six times the national maximum contamination level (MCL), which is the national maximum safe level for drinking water.<sup>2</sup>

Dairy processing facilities also have significant environmental impacts. Effluent discharges from the facilities contain high levels of nitrogen and phosphorus and high organic load, and display fluctuations in pH due to the presence of caustic and acidic cleaning agents and other chemicals. If whey from the cheese-making process is discharged along with other wastewater, the organic load of the effluent is further increased, resulting in greater environmental impacts. Moreover, if not

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<sup>1</sup> [http://www.arb.ca.gov/app/emsinv/t25cat/cat\\_top25.php](http://www.arb.ca.gov/app/emsinv/t25cat/cat_top25.php);  
<http://www.valleyair.org/notices/Docs/4-27-06/IS-ND-Rule4570.pdf>

<sup>2</sup> Harter, Thomas et al., Shallow Groundwater quality on dairy farms with irrigated forage crops. *Journal of Contaminant Hydrology* 55 (2002) 287-315.

managed correctly, dissolved salts in the effluent can negatively impact soil structure and can cause salinity. In addition, steam is used for heat treatment processes, such as pasteurization, and is generally produced in on-site boilers. The combustion process produces air pollutants such as oxides of nitrogen and sulphur. Finally, discharges of milk powder from the exhausts of spray drying equipment can collect on surrounding surfaces. These deposits become acidic when wet and can cause corrosion in extreme cases.<sup>3</sup>

These environmental impacts not only make the Milk Plans a CEQA project, they are likely to be felt primarily in the Central Valley.

### **The Milk Plans are a CEQA project.**

CEQA applies to "projects" requiring discretionary approval from State government agencies. See CEQA Guidelines § 15060(c). A project is the *whole* of an activity that has the potential to result in a direct physical change or a reasonably foreseeable indirect physical change in the environment. CEQA Guidelines § 15378(a); Public Resources Code § 21065. Projects include activities directly undertaken by the any public agency. *Id.*

As discussed above, the Department's approval of the Milk Plans is likely to result in foreseeable indirect physical changes to the environment. In addition, the approval or disapproval of the Milk Plans is an activity directly undertaken by the Department.

The proponents of the Milk Plan amendments themselves envision that the amendments will result in the construction and operation of new milk processing plants. The Milk Plans are also likely to encourage the expansion and new construction of dairies. These are likely to affect the environment both via pollution associated with their construction and with their operation. Nor is this a project that is exempt from CEQA. See CEQA Guidelines Articles 18, 19. This demonstrates that the Department's approval of the Milk Plans has the potential to result in foreseeable physical changes to the environment, when considered as a whole, and is therefore a CEQA project.

### **The Central Valley will feel the brunt of the environmental impacts from the changes to the milk plans and does not have measures in place to address those impacts.**

As mentioned above, most of the environmental impacts from the increased construction and operation of milk processing plants and dairies are likely to be felt in the Central Valley. Most dairies in California are located in the Valley, and dairy growth in the Valley continues to outpace the rest of California. Moreover, milk processing plants tend to concentrate around dairies, and thus are likely to concentrate in the Central Valley.

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<sup>3</sup> United Nations Environment Programme and Danish Environmental Protection Agency, *Cleaner Production Assessment in Dairy Processing* (2000) 15, available at: <http://www.agrifood-forum.net/publications/guide/index.htm>.

However, the Central Valley does not have uniform regulations to address the disposal of wastes from these facilities, particularly milk processing plants. The California Regional Water Quality Control Board ("RWQCB") for the Central Valley Region has failed to regulate waste from food processing facilities, and the RWQCB's regulations for dairy lagoons, corrals, and field application of manure are both out-of-date and inadequate. The San Joaquin Valley Unified Air Pollution Control District's ("Air District") regulation of air pollution from dairies and other agricultural sources continues to languish. Two years after permits started to be required for agricultural sources, the Air District has yet to issue a permit to a new dairy, even as dairies continue to build without any action from the Air District.

**The Department should not approve the Milk Plan Amendments until the impacts of the growth in dairies and dairy processing facilities are fully considered.**

Until the RWQCB promulgates uniform regulations for disposal of wastes from food processing facilities in the Central Valley and until the RWQCB and the Air District better regulate dairy pollution of air and water in the Central Valley, the Department should not create further incentives to build more of these facilities. These environmental impacts should be fully analyzed in a complete environmental review, whether at the Department, at the RWQCB, or other venue, before the Department approves the changes to the Milk Plans. CRPE urges the Department to consider the environmental impacts of its approval of the Milk Plans and to take into account the lack of means to address these impacts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Avinash Kar', with a long horizontal flourish extending to the right.

Avinash Kar  
Caroline Farrell  
Attorneys at Law